



2023:DHC:8415

* **IN THE HIGH COURT OF DELHI AT NEW DELHI
BEFORE**

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C) 11640/2019 and CM APPLs. 47828/2019 & 21542/2020**

Between: -

CHHAYA TYAGI
D/O SH. RAJESH TYAGI
T9/401, SUPREME TOWERS
GH-4&5, SECTOR-99, NOIDAPETITIONER

(Through: Mr.M.R.Shamshad, Mr.Arijit Sarkar
and Ms.Nabeela Jamil, Advocates.)

Versus

UNIVERSITY OF DELHI
THROUGH ITS REGISTRAR
DELHIRESPONDENT NO. 1

FACULTY OF LAW
THROUGH ITS DEAN
UNIVERSITY OF DELHI
DELHIRESPONDENT NO. 2

(Through: Mohinder J.S.Rupal, Mr.Hardik Rupal
and Ms.Sachpreet Kaur, Advocates for Respondent No.1)

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Pronounced on: 22.11.2023

J U D G M E N T

1. The petitioner has preferred the instant writ petition seeking directions against the respondents to allow the petitioner to attend the evening classes of LL.M. and sit for LL.M. second year examination. Alternatively, the petitioner has also prayed for transferring the petitioner from two year to three year LL.M. course to complete her ongoing studies on account of her employment as a judicial officer.
2. The facts of the present case exhibit that in the year 2018, after successfully qualifying the All-India Entrance Test conducted by respondent no.1-University, the petitioner secured admission in two year LL.M. course of respondent no.1-University. Pursuant thereto, she had duly submitted an undertaking, as required by respondent no.1-University at the time of admission, that she is neither employed or practicing as an advocate nor she would take up employment or practice as an advocate during the period of her LL.M. course.
3. However, after completing her first year of LL.M. course, the petitioner was appointed as a judicial officer and she joined the Delhi Judicial Services on 13.06.2019. Thereafter, she completed the requisite formalities for admission to the second year of LL.M. course and also submitted a declaration of her employment to the respondents. Subsequently, she submitted an application to respondent no.2 to allow her to attend evening classes to complete her course owing to the employment of the petitioner.
4. She also sought permission of the High Court on administrative side as the employer to pursue her course through evening classes and the said request was accepted *vide* letter dated 26.09.2019. However, she did not receive any reply from the respondents regarding the decision taken by them

on her application for completing her course while attending evening classes.

5. On 31.10.2023, this court directed the respondents to take a formal decision on the application of the petitioner and in pursuance of the same, the decision of rejection of her application was communicated to the petitioner *vide* email dated 02.11.2023.

6. Learned counsel appearing on behalf of the petitioner submits that the petitioner is a meritorious candidate who had already completed eight out of total eleven papers required to be passed during the entire course and therefore, she must be shifted to three year LL.M. course to complete her remaining studies. According to him, the course structure and the scheme of examination of two year LL.M. course is exactly similar to three year LL.M. course and except the latter being a course specially designed for the working professionals, there exists no difference between the two courses which could act as an impediment in transferring the petitioner to the three year LL.M. course.

7. Learned counsel further submits that the case of the petitioner is not of an inter-college or inter-university migration, rather it only pertains to shifting the mode of studying the LL.M. course from morning shift to evening shift within the same department. He, therefore, contends that the bar on inter college migration, as envisaged under Clause 3(b) of Ordinance IV of the University of Delhi Act, 1922, is not applicable against the petitioner as respondent no.2 is listed under faculties/departments and not in the list of colleges.

8. He also submits that the affidavit of unemployment submitted by the petitioner does not bar her from seeking transfer from two year LL.M.

course to three year LL.M. course. While indicating at the Information Bulletin 2018-19 of respondent no.2, he submits that as per the said Information Bulletin, the requirement of affidavit must be construed only to the extent that the candidates should not be in employment at the time of admission. According to him, the act of waiving off the requirement of the affidavit at the time of accepting the employment declaration form, fees and representation of the petitioner, would constitute an estoppel against the respondents. He also contends that if the LL.M. Notification 2015 dated 26.06.2015 is perused, it would nowhere reflect the demand for an affidavit of unemployment and therefore, in absence of the said provision, respondent no.2 is not authorized to demand any such affidavit.

9. Learned counsel for the petitioner has placed reliance on various decisions of this court in the cases of *Twinkle Wadhwa v. University of Delhi*¹, *University of Delhi v. Varun Kapur*², *Kanishka Aggarwal v. University of Delhi*³, *Jayshree Ravi & Anr. v. University of Delhi & Anr.*⁴, *Himani Sharma v. University of Delhi*⁵ and *Antariksha Anand v. Guru Gobind Singh Indraprastha University*⁶.

10. *Per contra*, learned counsel appearing on behalf of the respondents opposes the submissions made by learned counsel for the petitioner. He states that the petitioner is a student of full time two year LL.M. regular course and since migration is not allowed in any of the post-graduate

¹2012 SCC OnLine Del 577

²ILR (2011) IV Delhi 565

³ILR (1991) II Delhi

⁴1993 SCC OnLine Del 503

⁵2013 SCC OnLine Del 3547

⁶2013 SCC OnLine Del 3905

courses, the petitioner is also not entitled for being shifted to three year LL.M. course.

11. Learned counsel submits that the course structure of both the LL.M. courses is strikingly different as two year LL.M. course is a full-time course whereas, on the contrary, three year LL.M. course is a part-time course for the working professionals. He submits that the petitioner has flagrantly violated her own affidavit dated 23.07.2018, which was submitted at the time of admission to two year LL.M. course, wherein, she has categorically stated that she would not engage in any trade, business, service or profession during the course of her LL.M. studies. He, therefore, submits that any such midstream switchover from one course to another is not permissible as per the existing policy of the respondents.

12. While referring to the affidavit filed by respondent no.1 on 08.11.2023, learned counsel for the respondents submits that as per the existing rules and regulations, no student is allowed to be admitted as a candidate for the examination for any of the semesters after a lapse of period of five years from the date of admission to the first semester of two year LL.M. program. It is, therefore, contended that since the petitioner took admission in the academic session 2018-19 and with the culmination of the academic year 2022-23, the said period of five years has already lapsed, she is not eligible for admission at this stage.

13. He further submits that the petitioner is endeavouring to merge two different courses of LL.M. and create a hybrid course of LL.M. and under no circumstances, such a demand can be allowed to merely suit the convenience of the petitioner. He contends that the Information Bulletin 2018-19 clearly indicates a distinction between both the courses of LL.M.

and it also specifically stipulates the requirement of an affidavit for two year course at the time of the admission.

14. Learned counsel has placed reliance on a decision of the Division Bench of this Court dated 26.09.2016, passed in LPA 258/2016 titled as *Awadesh Kumar v. Delhi University & Anr.*

15. I have heard the learned counsel appearing on behalf of the parties and perused the record.

16. The short controversy involved in the instant petition is whether two year LL.M. course is on an equal footing with three year LL.M. course and by virtue of the same, the petitioner is entitled for being shifted to three year LL.M. course of the respondents.

17. The main argument raised by the petitioner is that there is no difference between two year and three year LL.M. course and therefore, the petitioner cannot be denied to reap the benefit of shifting to the course designed for the similarly situated candidates.

18. Since the nature and duration of both the LL.M. courses are in question, it is apposite to extract the relevant portion of the Information Bulletin 2018-19 of the respondents, which reads as under:

"1. Duration of LL.M. Course

(i) LL.M. Two-Year (Four Terms) Course:

This is full-time course meant only for those who are not in employment or engaged in any trade, profession, business or occupation. The student is required to give an affidavit for the same at the time of admission.

(ii) LL.M. Three-Year (Six Terms) Course:

This course is meant for all applicants including those who are employed or otherwise engaged in any trade, profession, business or occupation.

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19. It is discernible from the aforementioned clause that sub-clause (i), which deals with the two year LL.M. course, categorically mentions the

phrase 'full-time course' which is missing from sub-clause (ii) pertaining to the three year LL.M. course. Therefore, the explicit exclusion of the said phrase in sub-clause (ii) would indicate that though three year LL.M. course may not be specifically described as a part-time course, however, the same cannot be said to be exactly congruent to that of two year full-time course. The reference may be drawn from the maxim which led to the origin of '*casus omissus*' principle of interpretation of statutes i.e., '*casus omissus pro omissis habendus est*', which literally translates as- a case omitted is to be held intentionally omitted. It can, therefore, be inferred that the Information Bulletin 2018-19 of the respondents intentionally omits the phrase 'full-time' and also the condition of an affidavit with respect to non-employment.

20. It is also seen that both the sub-clauses are couched in a language which strikes a distinction between working professionals and the candidates who are not employed in any trade, business, service etc. The three year LL.M. course is specially designed for the people who are employed but it does not stipulate that if any student attains employment in the midst of two year LL.M. course, he/she can take the advantage of three year LL.M. course to continue the studies alongwith the employment.

21. In fact, if the objective behind bringing the LL.M. course which spans to a period of three years of study is taken into consideration, it can be inferred that it is exclusively meant for the purpose of facilitating the working professionals. Even assuming that the course structure is same for both the courses, as it has been contended by the petitioner, the same would not render any prudent equivalence which can be drawn between the said courses as there are other significant considerations which make them stand apart from each other.

22. Further, the Information Bulletin 2018-19 also stipulates that the student taking admission in two year LL.M. course shall submit an affidavit in the prescribed form to the effect that he/she is not employed or engaged in any gainful work or employment. In pursuance of the said condition, the petitioner had also submitted an undertaking in the prescribed format, which reads as under:

AFFIDAVIT

I Chhaya Tyagi S/o D/o Sh. Rajesh Tyagi R/o 41, Chitrakoot Appts, CBD, Delhi hereby solemnly affirm and declare that: -

- 1. That my age is 25 years.*
- 2. That I am applicant for LL.M. (full time) 2 years Course offered by Faculty of Law, University of Delhi-110007.*
- 3. That I am not engaged in any kind of service, employment, trade, business or profession or any other gainful activity.*
- 4. That I will not engage in any trade, business, service or profession during the course of my LLM studies.*
- 5. That neither I am presently practicing as an advocate nor I will practice as long as continue my LL.M. studies.*

Deponent

23. It is noteworthy that the aforesaid affidavit submitted by the petitioner at the time of admission, which has been placed on record, unequivocally states that the petitioner shall not engage in any trade, business, service or profession during the course of her LL.M.studies. Therefore, she is bound by the said statement as the principle of estoppel would apply against her. She cannot revert back from the said position.

24. The petitioner has also raised a contention that as per the Information Bulletin 2018-19, she was only required to submit an undertaking to the extent that she is not employed at the time of admission. According to her, the Information Bulletin 2018-19 does not contemplate any affidavit which may act as an estoppel against taking up any employment during the course of study. A specific averment has been made by learned counsel for the petitioner that the petitioner did not have any other choice but to accept the pre-drafted affidavit.

25. For the sake of clarity, the relevant clause dealing with the requirement of affidavit is culled out from the Information Bulletin 2018-19 at *Annexure-R1/B* of the affidavit submitted by respondent no.1 on 08.11.2023 and the same reads as under:

“3. The LL.M. Two-year Degree Course is a full-time Course meant for those who are not employed or engaged in any trade, profession, business or occupation. At the time of admission to LL.M. Two-year Course, the student shall submit an affidavit in the prescribed form to the effect that he/she is not employed or engaged in any gainful work or employment.

LL.M. Three-year Course is conducted in the evening and the students do not have to submit the aforesaid affidavit.”

26. A careful perusal of the aforementioned clause dealing with the two year LL.M. course would indicate that the condition pertaining to the requirement of affidavit stipulates the same to be submitted in a prescribed form. If the petitioner was aggrieved by the said condition, she must have challenged the same at the time of release of the Information Bulletin 2018-19 itself. It is well settled that once a candidate has participated in the admission process according to the terms and conditions of the prospectus, he/she cannot be allowed to turn around and challenge the contents of the said prospectus.

27. In the case of *Dhananjay Malik v. State of Uttaranchal*⁷, the Hon'ble Supreme Court has held as under:

“9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.”

28. The decision of the Hon'ble Supreme Court in the case of *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*⁸, vividly encapsulates the thin scope of interference of the courts in academic matters. The relevant paragraph of the said decision reads as under:

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.

[Emphasis supplied]

⁷(2008) 4 SCC 171

⁸(1984) 4 SCC 27

29. Further, the decisions relied upon by the petitioner are distinguishable on facts inasmuch as they either pertain to the relaxation of eligibility criteria due to fortuitous circumstances or existence of arbitrariness and illegality. In the present case, the policy decision of the respondents neither suffers from any legal infirmity nor from any allegation of *malafide*. Admittedly, the petitioner is also not seeking any migration to different college and therefore, the decisions relating to migration do not come to rescue the case of the petitioner.

30. In view of the aforesaid, this court is of the considered opinion that allowing any such floatation scheme from one course to another course, without there being any valid enforceability either through prospectus or otherwise, would prove to be detrimental in upholding the inherent integrity and sanctity of the education system. It would only end up in creating chaos and defeating the very purpose behind designing specific courses catering to the needs of specific set of individuals. The courts, while deciding such academic issues, cannot remain detached from underlying pragmatic constraints of the institutions conducting various courses.

31. In view of the aforesaid reasons, this court is not inclined to entertain the instant petition. Accordingly, the same is dismissed alongwith pending application.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 22, 2023

MJ/shs